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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/761,024	01/20/2004	Hugh Miller Rawls		3118

7590 12/09/2004

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EXAMINER

LOFDAHL, JORDAN M

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 12/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/761,024

Applicant(s)

RAWLS, HUGH MILLER

Examiner

Jordan Lofdahl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/20/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 7 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over McSherdon (6220525) and further in view of Rojas et al. (6773727).

As to claim 1, McSherdon discloses a method step of providing a carrier fluid (pressurized water); a first mixture (insecticide; col. 3, lines 1-4); mixing the first mixture and the carrier fluid to form a second mixture (water and the insecticide are mixed together in the housing (26)) providing an injector (10), including at least one probe (46) with at least one orifice (48); thrusting the probe into the ground (col. 3, lines 45-46) and injecting said mixture into the ground. Not disclosed is the first mixture comprised of solid diatomaceous earth and anhydrous borax. Rojas, however, discloses an insecticide mixture of diatomaceous earth (col. 16, lines 23-30) and anhydrous borax (boric acid; col. 17, lines 35-39). It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the first mixture of McSherdon with the insecticide mixture of Rojas et al. comprising diatomaceous earth and anhydrous borax (boric acid) to create a non-toxic insecticide means.

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As to claim 2, disclosed is glass particles (silica; col. 16, lines 20-31).

As to claims 3, 6 and 7, discloses are metal filings (alumina; filings is also read as powder).

As to claims 4, 9, 11 disclosed is vegetable oil (col. 14, lines 46-48).

Claims 5, 8, 10 and 12-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McSherdon (6220525) in view of Rojas et al. (6773727) and further in view Restive (5881493).

As to claims 5, 12-18, not disclosed is Pyrethrin. Restive, however, discloses an insecticide comprising Pryrethrin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to comprise the insecticide, as modified, of McSherdon, with another insecticide of Pyrethrin as taught by Restive, to create another non-toxic means to destroy insects.

As to claim 8, disclosed are metal filings (alumina).

As to claim 10, disclosed is vegetable oil ('727; col. 14, lines 46-48).

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jordan Lofdahl whose telephone number is 703.605.1217. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 703.305.7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

jml


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